

# ARKANSAS SUPREME COURT

No. CR 89-213

BOBBY DAVID STARLING  
Petitioner

v.

STATE OF ARKANSAS  
Respondent

Opinion Delivered March 19, 2009

PRO SE PETITION TO REINVEST  
JURISDICTION IN THE TRIAL  
COURT TO CONSIDER A PETITION  
FOR WRIT OF ERROR CORAM NOBIS  
[CIRCUIT COURT OF VAN BUREN  
COUNTY, CR 88-24 & CR 88-25]

PETITION DENIED.

## PER CURIAM

In 1989, a jury found petitioner Bobby David Starling guilty of the first-degree murder of his wife and second-degree battery of his wife's friend, Georgia Estlinbaum. Petitioner was sentenced to an aggregate term of life plus six years' imprisonment. This court affirmed the judgment. *Starling v. State*, 301 Ark. 603, 786 S.W.2d 114 (1990). Petitioner has filed the petition now before us in which he requests permission to proceed in the trial court with a petition for writ of error coram nobis.<sup>1</sup> After a judgment has been affirmed on appeal, a petition filed in this court for leave to proceed in the trial court is necessary because the circuit court can entertain a petition for writ of error coram nobis only after we grant permission. *Dansby v. State*, 343 Ark. 635, 37 S.W.3d 599 (2001) (per curiam).

As grounds for granting leave to proceed in the trial court, petitioner alleges that he is indigent, that the trial court denied a motion requesting expert assistance concerning petitioner's

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<sup>1</sup>For clerical purposes, the instant petition was assigned the same docket number as the direct appeal.

mental capacity in violation of due process, that the prosecution failed to disclose evidence concerning threats against petitioner's life that petitioner had reported and evidence concerning a diagnosis for social security benefits petitioner had received, and that the prosecutor made improper statements accusing appellant of malingering during closing arguments. None of petitioner's claims state a cognizable claim for error coram nobis relief.

The function of the writ of error coram nobis is to secure relief from a judgment rendered while there existed some fact which would have prevented its rendition if it had been known to the trial court and which, through no negligence or fault of the defendant, was not brought forward before rendition of judgment. *Cloird v. State*, 357 Ark. 446, 182 S.W.3d 477 (2004). For the writ to issue following the affirmance of a conviction, the petitioner must show a fundamental error of fact extrinsic to the record. *Thomas v. State*, 367 Ark. 478, 241 S.W.3d 247 (2006) (per curiam).

While there is no specific time limit for seeking a writ of error coram nobis, due diligence is required in making an application for relief and in the absence of a valid excuse for delay, the petition will be denied. *Echols v. State*, 360 Ark. 332, 201 S.W.3d 890 (2005). Due diligence requires satisfaction of certain conditions, as follows: (1) the defendant be unaware of the fact at the time of trial; (2) the defendant could not have, in the exercise of due diligence, presented the fact at trial; (3) upon discovering the fact, the defendant did not delay bringing the petition. *Id.*

A writ of error coram nobis is an extraordinarily rare remedy, more known for its denial than its approval. *Larimore v. State*, 341 Ark. 397, 17 S.W.3d 87 (2000). The writ is allowed only under compelling circumstances to achieve justice and to address errors of the most fundamental nature. *Pitts v. State*, 336 Ark. 580, 986 S.W.2d 407 (1999) (per curiam). We have held that a writ of error coram nobis was available to address errors found in one of four categories: insanity at the time of

trial, a coerced guilty plea, material evidence withheld by the prosecutor, a third-party confession to the crime during the time between conviction and appeal. *Sanders v. State*, 374 Ark. 70, \_\_\_ S.W.3d \_\_\_ (2008) (per curiam).

Petitioner couches his claim in terms that the prosecution “withheld” evidence in an attempt to fall within the third category. However, it is clear from petitioner’s allegations that he would have been aware of the report of threats, because he personally made the report, and of the social security benefits, because he received those benefits. It is equally clear that petitioner’s other claims do not fall within any of the recognized categories of error.

Nor do petitioner’s allegations demonstrate a fundamental error of fact extrinsic to the record which could not have been known at trial. A writ of error coram nobis is appropriate when an issue was not addressed or could not have been addressed at trial because it was somehow hidden or unknown. *Larimore v. State*, 327 Ark. 271, 938 S.W.2d 818 (1997). The judgment indicates that petitioner was represented by appointed counsel; his status as a pauper was recognized at trial. Petitioner’s own allegations indicate that the defense was aware of his mental history at the time of trial, as is obvious from the filing of a motion for expert assistance. Petitioner alleges the offensive statements by the prosecution were made during the closing arguments at trial. Each of the issues petitioner raises were or could have been raised during trial.

Petition denied.